

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

T.C.P. No.453/I&BP/2017

Under section 9 of the IBC, 2016

In the matter of  
SRI Projects ....Applicant

v/s.

Latur Integrated Textile Park Pvt. Ltd.  
....Respondent

Order delivered on: 31.07.2017

Coram:

Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)  
Hon'ble Mr. V. Nallasenapathy, Member (Technical)

For the Petitioner : Mr. Sreeprajeev, Adv.  
For the Respondent : Mr. Sanket J. Shah, Adv.

*Per B. S. V. Prakash Kumar, Member (Judicial)*

**ORDER**

The Company Petition originally filed u/s 433(e) and 434 of the Companies Act against the Corporate Debtor before the Hon'ble High Court of Bombay for winding up of this debtor company on the ground that this debtor company namely; **Latur Integrated Textile Park Pvt. Ltd.** defaulted in making repayment of ₹2,82,54,479.93. Thereafter, when winding up matters under 433(e) of the Act 1956, owing to jurisdictional change, transferred to NCLT to this NCLT Bench, in view of jurisdictional change, this Petitioner presently filed Form 5 u/s 9 of the Insolvency and Bankruptcy Code for initiation of Corporate Insolvency Resolution Process against this Corporate Debtor, hence this Petition.

2. While going through the facts of this case, it appears that this Petitioner received Work Order dated 11.06.2011 for construction work of garment and other auxiliary building situated at D-68, Additional Industrial Area, MIDC, Latur, and the nominal value of the said contract was of ₹13,72,76,901, and the same was increased up to an amount of ₹16,09,84,772.88 till the running bill no.19 issued by the Petitioner. To prove that service had been rendered by the Petitioner to the Corporate Debtor and also to show that Corporate Debtor made payments to the Petitioner, the petitioner filed a certificate of payment letter dated 28.2.2011 given by one Technopark Advisors Pvt. Ltd. purportedly an Advisor to the debtor requesting the debtor company to pay ₹14,03,157 against RA Bill no 19 to the petitioner. The Petitioner further states that the aforesaid contract amount ₹15,60,01,416.77 was excluding Service Tax and Maharashtra VAT. He further states that since the debtor further asked to do additional work, that was also done by the Petitioner, in pursuance of it, two bills were raised for a sum of ₹23,32,971 and ₹61,80,917.83. The petitioner says that these two aforesaid bills were certified by one S.N. Todi, the Commercial Advisor and authorized signatory to the Corporate Debtor Company.

3. Collating the petitioner claim, the Petitioner stated that entire amount to receive was ₹17,87,49,632.98, out of which, the Corporate Debtor having made payment of ₹15,04,95,153.05, the net amount payable as on 16.09.2016 by the Corporate Debtor came down to ₹2,82,54,479.93, Though the Work Order and Invoices raised in between 2009 and Feb 2011, the Petitioner filed some documents issued by a person namely Mr. S.N. Todi showing a company called Bombay Rayon Fashion Ltd. made payment of ₹1,50,000 in Bank Account maintained by the Creditor on 13.11.2015 to show that this payment was made by this third party on the corporate debtor behalf, therefore this part payment made by this third party saved the limitation in respect to the claim of ₹2,82,54,479.93 along with interest @ 18% per annum.



4. While looking at the documents placed by the Petitioner, it is evident that Work Order was given in the year 2009 and the work done by the Petitioner in September 2011, in respect to which, payments were shown as made in between 2009 and February 2011. In the Statement of Account maintained by the Petitioner with Bank of Maharashtra, it appears that last payment the Corporate Debtor made is an RTGS payment on 02.11.2010, ever since i.e. from 02.11.2010, not even a single rupee has been shown as made by this Corporate Debtor to this Petitioner, not only making payment, not even any acknowledgement has been given by the corporate debtor to show that this debt is saved by limitation. But whereas, the Petitioner made efforts to show that this Corporate Debtor made payment somewhere in the year 2015 in continuation to the payment made on 02.11.2010 by showing a deposit of ₹1,50,000 coming into the petitioner Account from a third party. He filed statement of account of the operational creditor with Axis Bank for a period from 01.11.2015 to 30.11.2015 to show that the company namely Bombay Rayon Fashion Ltd., made payment of ₹1,50,000 to link this payment towards the claim. It goes without saying that every company is an independent entity, therefore we wonder how a payment showing against a third party will become part payment towards this debt. Besides this, Work Contract was given in the year 2009, bills were raised in between 2009 and 2011 and payment entries are showing as come from the debtor company to the Account of the creditor up to 02.11.2010. Therefore, the petitioner having raised the invoices more than 5 years before 2016, even if payment made on 2.11.2010 taken into consideration, then also limitation of three years to file this claim started running from 2.11.2010. For more than three years have already passed away, today the petitioner side could not have argued that this debt is within limitation. The Petitioner to set up this case, it has filed unsigned document dated 28.12.2015, and copies of two emails dated March 15, 2012 and July 07,2014, purported to have been given by on S. N. Todi as if this man was acknowledging the debt on behalf of the debtor, when we closely examine these so called emails, we have noticed that there are not even photo copies of emails, they are only two documents set up to save this case barred by limitation. First of all, these mails are fake and no material being put



forward to say that Todi is authorized to acknowledge these debts on the debtor behalf, this petition does not deserve any merit.

5. By issuing some document showing as Ambiguity Items dated 28.12.2015 (page No. 23 and 24 of the main Petition) not signed by anybody will not have any credence to take it as evidence proving the case of the petitioner. While going through all the documents filed by this Petitioner, the only document that is showing as the Corporate Debtor made payment to this Petitioner is bank statement showing money had been deposited by this Corporate Debtor from time to time up to 02.12.2010, except these entries, no other document filed by the Petitioner reflecting either Corporate Debtor acknowledging this debt or entering into any further agreement to validate the time barred debt. Even if it is true that this S.N. Todi continued as authorized signatory to Technopak Advisors Pvt. Ltd in the year 2009, it doesn't mean that he would continue as authorized signatory of this Corporate Debtor forever. Moreover, S.N. Todi has not mentioned anywhere in the ensuing documents that Technopak or this Todi working as agent to the debtor. Though it is a reiteration, for sake of clarification, we hereby state that the debtor being an independent legal entity, unless an acknowledgment or part payment is made by the debtor against a debt within limitation, or unless a fresh agreement is entered into to pay the time barred debt, such time barred debt is not enforceable.

6. On the top of this, the Petitioner himself filed a certificate dated 30.06.2017 from the Bank of Maharashtra maintaining the account of the Petitioner disclosing that no credit has been received from this Corporate Debtor after 13.10.2010. In this certificate, the Bank of Maharashtra categorically mentioned that no payment has come to the Account of the creditor form the Corporate Debtor after 13.10.2010. This document is directly in conflict with the version set up in the Company Petition. In any event either, the invoices raised by the debtor more than three years old by the date of filing of the Company Petition before the Hon'ble High Court, Bombay i.e. on 23.11.2016, it is evident that this Petition is hit by limitation. If at all the Petitioner decides to take other

legal recourse available, the petitioner is at liberty to proceed in accordance with law.

7. This order was pronounced in open court on 4.7.2017, but order was delivered on 31.7.2017.

8. Therefore, this Petition is dismissed without costs.



**V. NALLASENAPATHY**  
Member (Technical)



**B. S.V. PRAKASH KUMAR**  
Member (Judicial)